

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD**

LINWOOD CARE CENTER, Employer

and

CASE 04-RD-157892

SANDRA L. TRANSUE, Petitioner,

and

SEIU 1199 New Jersey, Union Involved

**EMPLOYER’S REQUEST FOR REVIEW OF ACTING REGIONAL
DIRECTOR’S JULY 28, 2016 ORDER DENYING EMPLOYER’S MOTION
TO HOLD *ST. GOBAIN HEARING***

201 New Operations, LLC d/b/a Linwood Care Center, as the successor employer to CPL (Linwood), LLC d/b/a Linwood Care Center (“Employers”), pursuant to Section 102.67 of the Board’s Rules and Regulations, hereby requests the Board to review and reverse the July 28, 2016 Order entered by Acting Regional Director Harold A. Meier (copy attached as Exhibit A) Denying Employer’s Motion to Hold *St. Gobain Hearing* in this matter (copy attached as Exhibit B); and, in support of such relief, states:

1. This RD Petition was filed by facility employees on August 13, 2015 seeking to schedule an election to determine if employees of Linwood Care Center in the unit described wish to be represented by SEIU 1199 New Jersey for the purposes of collective bargaining. A prior RM Petition, also

involving documentation of employee wishes for an election, was filed on January 30, 2015 (Case 04-RM-145463).

2. On August 18-19, 2015, the Regional Director, Dennis P. Walsh, entered an Order and Notice holding this RD Petition in abeyance pending the outcome of then pending ULP's (copies of the Order and Notice are attached as Exhibits C & D), without holding any "*St. Gobain hearing*" and without making any determination that the pending ULP's tainted the RD Petition.
3. On September 2, 2015, Employer sought review of that August 2015 actions by the Regional Director, which the Board denied by Order of February 10, 2016.
4. The ULP's that formed a basis of the Regional Director's August 2015 actions were consolidated for hearing as Cases 04-CA-146362 et al., in which consolidated matter, 201 New Road Operations, LLC was added as a party as the successor employer, due to the sale of the facility as of January 1, 2016.
5. A hearing was held in the consolidated ULP matters and an ALJ Decision was issued, to which the parties took exceptions to the Board, which exceptions are pending before the Board. The ALJ Decision after the hearing (JD-27-16, April 5, 2016) made no determination that the ULP's involved tainted or could have tainted the pending RD Petition.

6. On May 20, 2016, a related Request was filed with Board seeking to reopen and supplement *nunc pro tunc* the Board's review of the related dismissal by the same Regional Director, Dennis P. Walsh, of the RM Petition, also seeking the decertification of the same Union for the same unit, on grounds of previously undisclosed significant allegations of bias (a copy of the May 20, 2016 Request is attached as Exhibit E and incorporated by reference) (allegations substantial enough for the Board to impose a period of suspension as discipline).
7. On June 3, 2016, the May 20, 2016 Request was denied.
8. On June 10, 2016, a timely Request for Reconsideration of the June 3, 2016 denial was timely filed and is still pending before the Board.
9. On July 28, 2016, the Board's Executive Secretary issued a Notice to Show Cause as to why the Board should not find that the related RM Petition is now moot in light of the fact that the original Petitioner is no longer the employer of the unit employees due to the sale of the facility, to which Notice both CPL (Linwood), LLC (the prior employer) and 201 New Road Operations, LLC , as the successor employer, as recognized in the related ULP matters, filed a timely response on August 9, 2016, noting that the alleged bias of the same Regional Director, who is currently still serving as the Regional Director, affected the RM Petition, the pending ULP matters, and this RD Petition.

10. While the July 28, 2016 Motion to the Regional Director referenced the pending reconsideration request in the RM Petition matter, which involved conduct by the same Regional Director, the Acting Regional Director's Order of July 28, 2016 denying the Motion found that the allegations of bias reflected in that pending matter (which are also specifically before the Board in another matter at Case 04-RC-161246 (Devon Manor)) "did not present any new facts or circumstances which would warrant the Region's reconsideration of its decision to hold this petition in abeyance pending the resolution of the unfair labor practices charges referred to above."

11. Since the employees of Linwood Care Center have documented their wish to schedule an election to vindicate their rights under the NLRA for self-determination for more than a year and a half without an election and the delay in scheduling the election may be the result of bias by the Regional Director who directly exercised his discretion to determine that no elections be held, there are compelling reasons for the Board to address the Acting Regional Director's complete neglect of the issue in his Order since his error prejudicially affects the employees' rights to self-determination under the Act and to address the need for clarification of Board policies permitting elections and steps to clarify the right to an election while possibly related ULP matters are being determined and substantial allegations are pending of Regional Director bias affecting the delay of the election.

12. The July 28, 2016 Motion denied by the Acting Regional Director sought to have a *St. Gobain hearing* to resolve the underlying question of whether any of the ULP's involved can be shown to have tainted the RD Petition such that any further delay in vindicating employee rights to self-determination can be justified. *See also:* Member Miscimarra's statements in favor of Board reconsideration of its blocking policies in the Order of February 17, 2016 in the RM Petition Matter and in 79 F.R. 74308 at 74430-74460 (December 15, 2014). The use of such "test proceedings" is supported both by the Board's *St. Gobain* process and by the interests in administrative economy. Where, as here, there is an administrative record with respect to the ULP allegations and there is no finding or argument that the determination of preclusive taint cannot be made from that record, the continuing delay in the determination of the taint issue clearly prejudices the employees seeking self-determination in their RD Petition, none of whom are alleged to have committed any ULPs or done anything that justifies the continuing denial of their rights to self-determination. In addition, since the determinations to dismiss and delay decertification petitions were made in the discretion of a Regional Director whose actions are now subject to pending substantial allegations of bias in making such determinations (substantial enough for the Board to impose a period of suspension as discipline), even though proceeding with the elections and

assessing the taint issues afterward were clearly permitted under Board casehandling guidance, the balance of the equities and rights involved must be toward taking action to validate whether the facts involved in this RD Petition, filed months after the dates on which the ULPs were alleged committed, can support further delay. Further delay is plainly unreasonable and not in the interest of employee rights under these facts. The Regional Director made no determination that the alleged ULPs did taint the RD Petition, but merely applied Board guidance permitting it to be held in abeyance pending the disposition of ULPs that might have tainted it. The Regional Director determined to deprive the employees of the right to free choice without a hearing or appropriate consideration of employee rights. Since more must be required to take away employees rights to self-determination under the NLRA, the Board should overrule the Acting Regional Director's determination to defer the employees' Due Process any further.

13. The Board has previously required some analysis of the extent to which pre-existing unfair labor practices actually taint or impair employee free choice. *See: Columbia Pictures Corporation*, 81 NLRB 1313 (1949) (finding special circumstances); *Maramont Corp.*, 317 NLRB 1035, 1036 (1995) (applying law of the case where the Board had previously determine there was no impairment); *see also: Master Slack Corp.*, 271 NLRB 78 (1984)

(establishing test to evaluate causal connection between unremedied ULPs and subsequent employee expression of dissatisfaction with a union); *St. Gobain Adhesives, Inc.*, 342 NLRB 434 (2004); Casehandling Manual Section 11730.3(c); *see also: Enterprise Leasing Co. of Florida v. NLRB*, No. 15-1200, U.S. Court of Appeals for D.C. Circuit (Decision issued August 5, 2016) (Slip Opinion at 23) (“Where unfair labor practices alleged to have tainted the decertification process are not directly related to that process, the Board applies the four-factor test articulated in *Master Slack*, 271 NLRB 78, 84 (1984)), to evaluate the causal link between the violations and the decreased union support.”).

14. The Board has already indicated that one of the ULP’s involved did not taint employee freedom of choice (Order of February 17, 2016 at FN1 in RM Petition).

15. The continuing delay of the resolution of the employees’ RD Petition causes unnecessary tension in the workplace and places employers at a serious disadvantage in their relations with both employees and the Union. Given that more than a majority of Employer’s employees have expressed their desire to vote on Union representation in a new election, the determination of whether there is a causal nexus between the ULP’s alleged and as shown before the ALJ and the RD Petition involved in this matter is both ripe and essential for the protection of the Employees’ rights of self-determination

under the NLRA. *See: Levitz Furniture of the Pacific, Inc.*, 333 NLRB 717, 720, 724 (2001) (“The Board has held that an employer violates Section 8(a)(2) by recognizing a union that lacks majority support or by continuing to recognize an incumbent union that it knows has lost majority support.”) (“Under Board law, if a union actually has lost majority support, the employer must cease recognizing it, both to give effect to the employees’ free choice and to avoid violating Section 8(a)(2) by continuing to recognize a minority union.”); *see also: Fall River Dyeing & Finishing Corp. v. NLRB*, 482 U.S. 27, 49-50 (1987) (disruption to employee morale and to their exercise of their organizational rights from uncertainties in resolution of representational issues); *Chester ex rel. NLRB v. Grane Healthcare Co.*, 666 F.3d 87, 102-103 (3rd Cir. 2011) (*citing same*).

16. While in *Levitz*, the Board, at FN1, adhered to its policy that employers may not withdraw recognition in a context of severe unremedied unfair labor practices tending to cause employees to become disaffected from the union, the Board in *Levitz* recognized that employee-initiated RD Petitions – such as that present in this case – present special circumstances that require protection of employee rights to self-determination guaranteed by the NLRA.

WHEREFORE, the Board should grant review of this matter and reverse the Acting Regional Director's Order and Order that a *St. Gobain Hearing* be scheduled in this matter to determine whether there is any preclusive taint from the ULP's on which the prior abeyance order is based and, if not, to then require that the election requested by the employees in their RD Petition be scheduled and conducted.

Date: August 11, 2016

Respectfully submitted,

/s/ Louis J. Capozzi, Jr.

Louis J. Capozzi, Jr.

[Employers' Legal Representative]

CERTIFICATE OF SERVICE

I hereby certify that, pursuant to Section 102.21 of the Board's Rules and Regulations, a true and correct copy of this Request for Review was served electronically sent to the email addresses of record noted below:

Jay Jaffe, Senior Managing Counsel
1199 SEIU United Health care Workers East
310 West 43rd Street (9th floor)
New York, NY 10036-3981 (by email to: Jayj@1199.org)
(Union's Legal Counsel)

Sandra L. Transue
1432 Doughty Rd.
Egg Harbor Township, NJ 08234-2252 (by email to: Sedes38@aol.com)
(Petitioner)

Dennis P. Walsh, Regional Director (Region 4) (recused)
Harold A. Maier, Acting Regional Director
National Labor Relations Board
615 Chestnut Street (7th floor)
Philadelphia, PA 19106-4404 (by e-mail to: Dennis.Walsh@nlrb.gov)

/s/ Louis J. Capozzi, Jr.
Louis J. Capozzi, Jr., Esquire
Respondent's Legal Representative

DATE: August 11, 2016

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
FOURTH REGION**

LINWOOD CARE CENTER

Employer

and

SANDRA L. TRANSUE

Case 4-RD-157892

Petitioner

and

SEIU 1199 NEW JERSEY

Union Involved

**ORDER DENYING EMPLOYER'S MOTION
TO HOLD ST. GOBAIN HEARING**

In its Motion To Hold St. Gobain Hearing, dated July 28, 2016, the Employer seeks to have the Region conduct a hearing concerning the potential causal nexus between certain unfair labor practices and the Petition filed in this matter on August 13, 2015. By Order dated August 18, 2015, the Region announced its decision to postpone further processing of this Petition indefinitely and, by letter dated August 19, 2015, the parties to this case were notified that the matter would be held in abeyance pending the resolution of the unfair labor practice charges filed by the Union Involved in Cases 04-CA-146362, 146670, and 148705. On February 10, 2016, the Board denied the Employer's Request For Review of that decision.

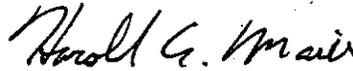
In its Motion the Employer did not present any new facts or circumstances which would warrant the Region's reconsideration of its decision to hold this petition in abeyance pending the resolution of the unfair labor practice charges referred to above. Accordingly, the Employer's Motion To Hold St. Gobain's Hearing is denied and the case will continue to be held in abeyance in accordance with the Region's Order dated August 18, 2015.

RIGHT TO REQUEST REVIEW

Pursuant to Section 102.67 of the Board's Rules and Regulations, a request for review may be filed with the Board at any time following the issuance of this Decision until 14 days after a final disposition of the proceeding by the Regional Director. Accordingly, a party is not precluded from filing a request for review of this decision after the election on the grounds that it did not file a request for review of this Decision prior to the election. The request for review must conform to the requirements of Section 102.67 of the Board's Rules and Regulations.

A request for review may be E-Filed through the Agency's website but may not be filed by facsimile. To E-File the request for review, go to www.nlr.gov, select E-File Documents, enter the NLRB Case Number, and follow the detailed instructions. If not E-Filed, the request for review should be addressed to the Executive Secretary, National Labor Relations Board, 1015 Half Street, SE, Washington, DC 20570-0001. A party filing a request for review must serve a copy of the request on the other parties and file a copy with the Regional Director. A certificate of service must be filed with the Board together with the request for review.

Signed at Philadelphia, Pennsylvania this 28th day of July, 2016.



HAROLD A. MAIER

Acting Regional Director,¹ Fourth Region
National Labor Relations Board
615 Chestnut Street, Suite 710
Philadelphia, PA 19106

¹ Regional Director Dennis P. Walsh is recused from this matter.

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 4
Case 04-RD-157892**

SANDRA L. TRANSUE (Petitioner)
and

CPL (LINWOOD) LLC D/B/A
LINWOOD CARE CENTER AND
ITS SUCCESSOR
201 NEW ROAD OPERATIONS, LLC
D/B/A LINWOOD CARE CENTER (Employer)
and

1199 SEIU UNITED HEALTHCARE WORKERS EAST (Union)

EMPLOYER'S MOTION TO HOLD ST. GOBAIN HEARING

Employer, by its attorneys, pursuant to Casehandling Manual Section 11730.3(c), submits this Motion for the Board to conduct a hearing in this matter, as required by Section 11730.3(c) and *Saint Gobain Abrasives, Inc.*, 342 NLRB 434 (2004), to resolve any genuine issues of fact as to whether there is a causal nexus between alleged unfair labor practices and the filing of the decertification petition involved in this matter; and, in support of such relief states:

1. The Petition in this matter was filed on August 13, 2015.

2. On August 19, 2015, the Regional Director notified the parties that this matter would be held in abeyance pending the resolution of the ULP's in Cases 04-CA-146362, -146670 and -148705.
3. On February 10, 2016, the Board denied review of the August 19, 2015 decision.
4. A hearing was held in the referenced ULP cases on February 8-10, 2016.
5. During the pre-hearing proceedings in the related ULP cases Employer was advised by the ALJ at that time, after Employer indicated that two (2) weeks were needed for the hearing in order to cover the *Saint Gobain* taint issues, that the hearing on the ULP cases would not reach whether there was a causal nexus between the alleged ULP's and the filing of any decertification petition; that the *Saint Gobain* issue would be determined at a separate hearing; and, that putting on evidence on the taint issue would not be necessary during the ULP hearing.
6. There is a separate Petition involved in Case 04-RM-145463, filed on January 30, 2015, which was dismissed on May 14, 2015 by the Regional Director, as to which the Board denied review on February 17, 2016, but which dismissal is pending the resolution of reconsideration requests to Board, the last filed on June 10, 2016.

7. As a result of the pending RM and RD petitions, employees at Employer's nursing facility have been seeking to have the Board hold an election for them to express their free choice as to their representation for more than a year and a half without an election being held.
8. On April 5, 2016, the ALJ issued his decision, JD-27-16, in the related ULP cases and transferred the proceedings to the Board.
9. On May 2, 2016, the General Counsel filed Exceptions to the ALJ's Decision.
10. On May 3, 2016, Employer filed Exceptions to the ALJ's Decision.
11. To date, the Board has not issued a decision as to the filed Exceptions.
12. The ALJ's Decision includes a recommended order that Employer bargain in good faith with the Union until a CBA or impasse is reached.
13. Given that more than a majority of Employer's employees have expressed their desire to vote on Union representation in a new election, the determination of whether there is a causal nexus between the ULP's alleged and as shown before the ALJ and the RD Petition involved in this matter is both ripe and essential for the protection of the Employees' rights of self-determination under the NLRA. *See: Levitz Furniture of the Pacific, Inc.*, 333 NLRB 717, 720, 724 (2001) ("The Board has held that an employer violates Section 8(a)(2) by recognizing a union that

lacks majority support or by continuing to recognize an incumbent union that it knows has lost majority support.”) (“Under Board law, if a union actually has lost majority support, the employer must cease recognizing it, both to give effect to the employees’ free choice and to avoid violating Section 8(a)(2) by continuing to recognize a minority union.”).

14. While in *Levitz*, the Board, at FN1, adhered to its policy that employers may not withdraw recognition in a context of severe unremedied unfair labor practices tending to cause employees to become disaffected from the union, the Board in *Levitz* recognized that employee-initiated RD Petitions – such as that present in this case – present special circumstances that require protection of employee rights to self-determination guaranteed by the NLRA.
15. The Board has previously required some analysis of the extent to which pre-existing unfair labor practices actually taint or impair employee free choice. *See: Columbia Pictures Corporation*, 81 NLRB 1313 (1949) (finding special circumstances); *Maramont Corp.*, 317 NLRB 1035, 1036 (1995) (applying law of the case where the Board had previously determine there was no impairment); *see also: Master Slack Corp.*, 271 NLRB 78 (1984) (establishing test to evaluate causal connection between

unremedied ULPs and subsequent employee expression of dissatisfaction with a union); *St. Gobain Adhesives, Inc.*

16. Since the alleged ULP's giving rise to the Regional Director's determination to hold this Petition in abeyance occurred more than six months prior to the filing of this Petition and there was no evidence presented at the hearing on the ULP's indicating any nexus between the filing of this Petition and the alleged ULP's, the continuing delay of Employees' rights to self-determination in this matter is unjustified. *Compare: Ryan Iron Works, Inc. v. NLRB*, 257 F.3d 1, 13 (1st Cir. 2001) (Where Petition filed 4 weeks after ULP after employees returned from strike and 6 weeks after direct dealing ULP presented a "close question" of whether combined ULPs could reasonably be found to significantly contribute to loss of majority status in a withdrawal of recognition dispute).

WHEREFORE, Employer requests the Board to schedule the *Saint Gobain* hearing for this matter.

Respectfully submitted,

/s/ Louis J. Capozzi, Jr.
Louis J. Capozzi, Jr., Esquire
[Employer's Legal Representative]

DATE: JULY 28, 2016

CERTIFICATE OF SERVICE

I hereby certify that, pursuant to Section 102.21 of the Board's Rules and Regulations, a true and correct copy of this Motion to Dismiss in Part was served electronically sent to the email addresses of record noted below:

Jay Jaffe, Senior Managing Counsel
1199 SEIU United Health care Workers East
310 West 43rd Street (9th floor)
New York, NY 10036-3981 (by email to: Jayj@1199.org)
(Union's Legal Counsel)

1199 SEIU United Healthcare Workers East
555 Route 1 South (3rd Floor) (by email to: Roz.Waddell@1199.org)
Iselin, NJ 08830
(Union)

Sandra L. Transue
1432 Doughty Rd.
Egg Harbor Township, NJ 08234-2252 (by email to: cedes38@aol.com)
(Petitioner)

Dennis P. Walsh, Regional Director (Region 4)
National Labor Relations Board
615 Chestnut Street (7th floor)
Philadelphia, PA 19106-4404 (by e-filing)

/s/ Louis J. Capozzi, Jr.
Louis J. Capozzi, Jr., Esquire
Respondent's Legal Representative

DATE: JULY 28, 2016

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
FOURTH REGION**

LINWOOD CARE CENTER

Employer

and

SANDRA L. TRANSUE

Case 4-RD-157892

Petitioner

and

SEIU 1199 NEW JERSEY

Union Involved

ORDER POSTPONING HEARING INDEFINITELY

PLEASE TAKE NOTICE that the hearing in the above-entitled matter scheduled for August 21, 2015 is hereby postponed until further notice.

Signed at Philadelphia, Pennsylvania this 18th day of August, 2015.



DENNIS P. WALSH

Regional Director, Fourth Region
National Labor Relations Board
615 Chestnut Street, Suite 710
Philadelphia, PA 19106



UNITED STATES GOVERNMENT
NATIONAL LABOR RELATIONS BOARD

REGION 04
615 Chestnut St Ste 710
Philadelphia, PA 19106-4413

Agency Website: www.nlr.gov
Telephone: (215)597-7601
Fax: (215)597-7658

August 19, 2015

Sandra L. Transue
1432 Doughty Rd.
Egg Harbor Township, NJ 08234-2252

Louis Capozzi, Euire.
Capozzi Adler
1200 Camp Hill Bypass
Camp Hill, PA 17011-3700

Bruce G. Baron, Esquire
Capozzi Adler, PC
PO Box 5866
Harrisburg, PA 17110-0866

Re: Linwood Care Center
Case 04-RD-157892

Gentlemen and Ms. Transue:

This is to confirm that the petition in the above-captioned case will be held in abeyance pending the resolution of the unfair labor practice charges in Cases 04-CA-146362, 04-CA146670 and 04-CA-148705. These charges allege that the Employer violated employees' Section 7 rights by soliciting employees to sign a petition against the Union; promising improved working conditions or benefits to employees in order to discourage them from supporting the Union; creating the impression of surveillance of employee Union and protected concerted activity; interrogating and polling employees; and making a number of coercive statements to employees. The charges further allege several violations of Section 8(a)(5) of the Act by engaging in bad faith bargaining or making unilateral changes in employees' terms and conditions of employment.

The National Labor Relations Board maintains a policy of holding in abeyance any representation case where pending unfair labor practice charges are filed by a party to the representation case, and such charges allege conduct of a nature which would have a tendency to interfere with the free choice of the employees if an election were to be conducted. See *United States Coal & Coke Company*, 3 NLRB 398, 399 (1937); *Carson Pirie Scott & Company*, 69 NLRB 935, 938-939 (1946); *Columbia Pictures Corporation*, et al, 81 NLRB 1313, 1314 (1949); NLRB *Case Handling Manual*, Section 11730. As the alleged unlawful conduct would tend to interfere with the free choice of employees in an election, further processing of the petition will be held in abeyance pending the resolution of the unfair labor practice charges.

Right to Request Review: Pursuant to Section 102.67 of the National Labor Relations Board's Rules and Regulations, you may obtain a review of this action by filing a request with the Executive Secretary, National Labor Relations Board, 1015 Half Street SE, Washington, DC 20570-0001. The request for review must contain a complete statement of the facts and reasons on which it is based.

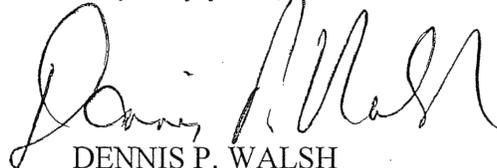
Procedures for Filing Request for Review: A request for review must be received by the Executive Secretary of the Board in Washington, DC, by close of business (**5 p.m. Eastern Time**) on Wednesday, September 2, 2015, unless filed electronically. If filed electronically, it will be considered timely if the transmission of the entire document through the Agency's website is **accomplished by no later than 11:59 p.m. Eastern Time** on Wednesday, September 2, 2015.

Consistent with the Agency's E-Government initiative, parties are encouraged, but not required, to file a request for review electronically. Section 102.114 of the Board's Rules do not permit a request for review to be filed by facsimile transmission. A copy of the request for review must be served on each of the other parties to the proceeding, as well as on the undersigned, in accordance with the requirements of the Board's Rules and Regulations.

Filing a request for review electronically may be accomplished by using the E-filing system on the Agency's website at www.nlr.gov. Once the website is accessed, click on **E-File Documents**, enter the NLRB Case Number, and follow the detailed instructions. The responsibility for the receipt of the request for review rests exclusively with the sender. A failure to timely file the request for review will not be excused on the basis that the transmission could not be accomplished because the Agency's website was off line or unavailable for some other reason, absent a determination of technical failure of the site, with notice of such posted on the website.

Upon good cause shown, the Board may grant special permission for a longer period within which to file a request for review. A request for extension of time, which may also be filed electronically, should be submitted to the Executive Secretary in Washington, and a copy of such request for extension of time should be submitted to the Regional Director and to each of the other parties to this proceeding. A request for an extension of time must include a statement that a copy has been served on the Regional Director and on each of the other parties to this proceeding in the same manner or a faster manner as that utilized in filing the request with the Board.

Very truly yours,



DENNIS P. WALSH
Regional Director

cc: Office of the Executive Secretary (by e-mail)

Rose Przychodzki
Linwood Care Center
201 New Road
Linwood, NJ 08221-1296

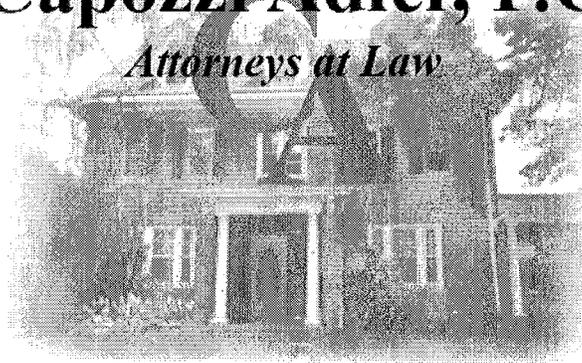
Jay Jaffe
New York's Health & Human Service Union 1199/SEIU
310 West 43rd Street, 9th Floor
New York, NY 10036

SEIU 1199 New Jersey
555 Rt 1 S Fl 3
Iselin, NJ 08830-3179

Louis J. Capozzi, Jr., Esquire*
Daniel K. Natirboff, Esquire
Donald R. Reavey, Esquire
Craig I. Adler, Esquire**
Andrew R. Eisemann, Esquire
Glenn A. Parno, Esquire**
Bruce G. Baron, Esquire
Brandon S. Williams, Esquire
Nicholas J. Luciano, Esquire
Joseph J. Gentile, Esquire***
Timothy Ziegler, Sr. Reimb. Analyst
Erin E. Anthony, Reimb. Analyst
Karen L. Fisher, Paralegal
Linda Gussler, Paralegal
Kelly A. Birdsall, Paralegal
*(Licensed in PA, NJ and MD)
**(Licensed in PA and NJ)
*** (Licensed in PA, NJ and CA)

Capozzi Adler, P.C.

Attorneys at Law



1200 Camp Hill Bypass
Camp Hill, PA 17011

Mailing Address: P.O. Box 5866
Harrisburg, PA 17110

Telephone: (717) 233-4101
Facsimile: (717) 233-4103
www.capozziadler.com

Mid-Penn Abstract Company
Charter Settlement Company
Telephone: (717) 234-3289
Facsimile: (717) 234-1670

May 20, 2016

NATIONAL LABOR RELATIONS BOARD
c/o Executive Secretary
National Labor Relations Board
1099 14th Street, NW
Washington, DC 20570-0001

ELECTRONICALLY FILED

RE: REQUEST TO SUPPLEMENT *NUNC PRO TUNC* THE
MARCH 15, 2016 REQUEST FOR RECONSIDERATION
OF THE ORDER OF FEBRUARY 17, 2016 AFFIRMING
DISMISSAL OF RM PETITION
Case 04-RM-145463 – Linwood Care Center
Our Matter No. 793-15

Dear Members of the Board:

On behalf of our client, CPL (Linwood) LLC d/b/a Linwood Care Center, the Employer, we are filing this Request to Supplement *nunc pro tunc* the March 15, 2016 Request for Reconsideration previously filed in the above-captioned case. While there is no specific mechanism in the Board's Casehandling Manual for such, courts have recognized that the Board's procedural rules permit an employer to submit such a request prior to the Board issuing its ruling. *See: NLRB v. U.S.A. Polymer Corp.*, 272 F.3d 289,

295 (5th Cir. 2001); *Cogburn Health Center, Inc. v. NLRB*, 437 F.3d 1266, 1272 (D.C.

Cir. 2006). **The Employer's request here supplements its original Request for**

Reconsideration, filed March 15, 2016; and, requests that the Regional Director's

Dismissal of the RM Petition be set aside and the Election permitted to proceed.

We note that a similar Motion for Rehearing and Reopening is pending before the Board at Case 04-RC-161246 (Devon Manor) based on similar facts relating to the recently disclosed suspension of Regional Director Dennis P. Walsh, who was the Regional Director in this matter who dismissed the Employer's RM Petition on May 14, 2015 without a hearing and without reference to evidence that was available to him that was explicitly contrary to his finding.

In dismissing the Employer's RM Petition, Regional Director Welsh found that the "the investigation revealed that the independent contractors acted as agents for the Employer and solicited employees to sign papers indicating that they no longer wished to be represented by the Union." In this decision, Regional Director Welsh did not even discuss Affidavits of Linwood employees Kristine Howell and Linda Adams, attached hereto respectively as Exhibits "A" and "B". These statements were obtained during the course of the Regional Director's investigation, and explicitly describe the process through which these employees, independent of any assistance from Employer or the hired consultants, directly solicited their co-workers to obtain the signatures on the petitions and forwarded the signed petitions to various members of Employer's

management. Regional Director Walsh did not provide any justification for discounting these affidavits. In fact, he did not reference these affidavits at all.

The Board upheld that Regional Director's determination by Order of February 17, 2016, noting at FN 1-2 of its decision:

In affirming the Regional Director, we find it unnecessary to rely on *SFO Good-Nite Inn, LLC*, 357 NLRB No. 16 (2011), enfd. 700 F.3d 1 (D.C. Cir. 2012). Instead, we rely on the NLRB Casehandling Manual Part Two, Sec. 11733.2(a)(I) and *Ron Tirapelli Ford, Inc.*, 304 NLRB 576,579-580 (1991), enfd. in rel. part 987 F.2d 433 (7th Cir. 1993) (affirming the judge's nullification of election results and dismissal of the RM petition where the judge determined that the RM petition was tainted because of the employer's "unlawful conduct and coercive role in its solicitation and support for the employee petition" that was used to support its RM petition). Additionally, we do not rely on the Regional Director's finding that the alleged information request violation tainted the employee disaffection with the Union.

2 Member Miscimarra agrees with his colleagues that the Regional Director did not abuse his discretion by dismissing the petition in this case.

The affidavits of employees Howell and Adams directly contradict the Regional Director's finding regarding "the employer's 'unlawful conduct and coercive role in its solicitation and support for the employee petition'" yet there is no justification or explanation for the Regional Director completely ignoring these statements and, ostensibly, favoring the Union's witnesses, whose statements are not available to the Employer or its counsel.

Since the basis for the Motion in *Devon Manor* involves recently disclosed evidence that Regional Director Walsh may hold a bias in favor of unions, such that his exercise of his discretion in matters before him, including the RM Petition

involved here, was tainted, we submit that the Board should vacate the dismissal of the RM Petition in this case and remand that RM proceeding for the implementation of the Stipulated Election Agreement.

As noted in the *Devon Manor Motion*, on March 28, 2016, Jessica Kahanek, acting as Spokewoman for the Board, announced – for the first time – that the Board had quietly suspended Regional Director Walsh without pay for a period of one month, starting on December 13, 2015. This announcement was made on behalf of the Board forty (40) days after the Board on February 17, 2016 upheld Regional Director Walsh’s exercise of his discretion in our client’s RM Petition matter. While Spokeswoman Kahanek declined to specify the reason for the Board’s decision, the news was broken by several news outlets, as identified in and attached to the *Devon Manor Motion*. Those articles, which note Regional Director Walsh’s conflicts of interests connected with his involvement with the Peggy Browning Fund, are attached hereto as Exhibits “C” and “D”. As noted in the *Devon Manor Motion*, the Board’s Inspector General, David Berry, issued a Report of Investigation (OIG-1-516) on November 5, 2015, which was provided the Board, prior to its determination of February 17, 2016 in our client’s RM Petition appeal, with information about Regional Director Walsh’s conflict of interest problems and concerns about related violations of the Standards of Ethical Conduct for Employees of the Executive Branch, including concerns about his involvement in soliciting donations from labor organizations (Findings of Fact 34, 44-46). The Board’s Inspector General

concluded in his report that reasonable cause:

exists to find that [RD Walsh] violated the Standards of Ethical Conduct for Employees of the Executive Branch (*Standards*) by personally soliciting funds from prohibited sources, using his official position to engage in fundraising, allowing his NLRB employment to be used to endorse the activities of the Peggy Browning Fund, and by using official time and Government resources for activities related to his outside employment with the Peggy Browning Fund.

Moreover, given that RD Walsh allowed his name to be used in the solicitation of individuals actively practicing before him in Region 4, the Inspector General found that he: “engaged in a course of action that created the perception that his official actions could be influenced in exchange for support of the Peggy Browning Fund,” and concluded that the “perception...could taint over half of the Charges” in the Region. While the Board had the Inspector General’s report prior to its review of the Regional Director Walsh’s exercise of discretion in our client’s RM Petition case, the Board made no reference to the report or the potential for bias issues contained therein in its February 17, 2016 determination.

Where, as here, there is clear evidence of such bias, there are extraordinary circumstances requiring curative action and nunc pro tunc relief. *See: Staffing Network Holdings LLC v. NLRB*, 815 F.3d 296, 304 (7th Cir. 2016) (clear showing of bias is extraordinary circumstances undercutting deference); *J.J. Cassone Bakery, Inc. v. NLRB*, 554 F.3d 1041, 1044-1045 (D.C. Cir. 2009) (discussing Due Process requirement for a fair hearing free of bias by the decision maker); *Marshall v. Jerrico, Inc.*, 446 U.S.

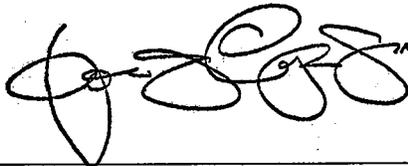
238, 242 (1980) (“The Due Process Clause entitles a person to an impartial and disinterested tribunal”). There is no question that the suspension of RD Walsh and the reasons for it have been kept confidential by the Board for as long as possible. There was no disclosure of the Inspector General’s Report even while the Board was considering matters subject to RD Walsh’s discretion such as our client’s RM Petition. Employers cannot be blamed for the shroud of secrecy that surrounded RD Walsh and the investigation of his misconduct. Under these circumstances, CPL (Linwood), the Employer in this matter, is entitled to seek review *nunc pro tunc*. See: *Salem Hospital Corp. v. NLRB*, 808 F.3d 59, 73 (D.C. Cir. 2015) (discussing rights to introduce new evidence where special circumstances require reexamination) in light of Regional Director Walsh’s failure to reference employee statements that were directly contradictory to his finding.

Since the IG’s Report and the fact of RD Walsh’s suspension for his violations of the Standards of Ethics are material to any evaluation of his exercise of discretion in matters before him, including our client’s RM Petition, on behalf of our client, the Employer in this case, we submit that fairness requires the Board to vacate the dismissal of the RM Petition to avoid any appearance of bias in that determination and to permit the Parties’ Stipulated Election Agreement to be implemented.

As stated in our pending Request for Reconsideration filed March 15, 2016, there was no finding after a hearing that any of the actions on which Regional Director Walsh

based his dismissal of the RM Petition tainted the RM Petition in contrast to the case decision on which the Board based its determination on February 17, 2016. The hearing conducted on the Consolidated Complaint eventually brought by Regional Director Walsh on July 31, 2015 at Case 04-CA-146362 et al. also did not result in such a finding. The Board should therefore cure the potential for bias issue in this matter by affording the employees who prepared and filed on their own the RM Petition their rights to self-determination protected by the NLRA, and as agreed to by the Union in the Stipulated Election Agreement.

Respectfully submitted this 20th day of May, 2016.



Louis J. Capozzi, Jr. , Esquire
Brandon S. Williams, Esquire
CAPOZZI ADLER, P.C.
P.O. Box 5866
Harrisburg, PA 17110
(717) 233-4101
[Attorneys for Employer]

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on the 20th day of May 2016, a true and correct copy of the foregoing REQUEST TO SUPPLEMENT *NUNC PRO TUNC* THE MARCH 15, 2016 REQUEST FOR RECONSIDERATION OF THE ORDER OF FEBRUARY 17, 2016 AFFIRMING DISMISSAL OF RM PETITION was served on the following by the method designated:

Executive Secretary (Via Electronic Filing)
NATIONAL LABOR RELATIONS BOARD
1099 14th Street, N.W.
Washington, DC 20570-0001

Henry R. Protas, Esq. (Via U.S. Mail and Electronic Notice)
National Labor Relations Board – Region 4
615 Chestnut Street (Suite 710)
Philadelphia, PA 19106-4413
[Counsel for the General Counsel]

JAY JAFFE, Esquire (Via U.S. Mail and Electronic Notice)
Senior Managing Counsel
1199 SEIU, United Healthcare Workers East
310 West 43rd Street (9th floor)
New York, NY 10036-6407
[Attorney for Petitioner 1199 SEIU]



Louis V. Capozzi, Jr., Esquire
[Attorney for Respondent]

DATE: May 20, 2016

Linwood Care Center
Case 04-RM-145463

Confidential Witness Affidavit

I, Kristine Howell, being first duly sworn upon my oath, state as follows:

I have been given assurances by an agent of the National Labor Relations Board (NLRB) that this Confidential Witness Affidavit will be considered a confidential law enforcement record by the NLRB and will not be disclosed unless it becomes necessary to produce this Confidential Witness Affidavit in connection with a formal proceeding.

I reside at 40117 Spruce Ave, Egg Harbor township, NJ 08234

My home telephone number (including area code) is 609-432-2716

My cell phone number (including area code) is

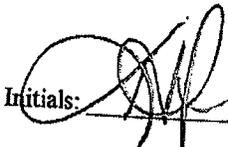
My e-mail address is forbjronly@yahoo.com

I employed by Linwood Care Center *at other facilities* *in* *Linwood, NJ*

I am employed as a per diem LPN. I work approximately *40* hours per week. I have worked for Linwood since 2013. *30*

voluntary information session

In or around mid - January 2015, I attended a *meeting* at work. The meeting was held in the main conference room. There were about 10 to 15 employees present. There were a number of meetings scheduled to accommodate all of the shifts during that week in January 2015. The people leading the meeting said that they were hired by Rivera *to educate employees* due to employee satisfaction surveys. They may have mentioned morale. The meeting lasted for about 15 to 20 minutes. There were two men and two women. One man's name was John *based on info on the* *meeting*. John did most of the talking. I do not know the names of the other people. They gave each employee a booklet which explained how different government agencies took care of certain worker problems. The booklet had the information highlighted. I do not recall exactly what was said

Initials: 

2/11/2015

in the meeting but I recall the flavor of the meeting. The flavor of the meeting was that that it was an educational session that was neither pro or anti-union. ~~John said that he knew that there was some frustration with contract negotiations.~~ He said that some of us may think our hands are tied. He said that there were laws such as OSHA, which took care of employee complaints about safety. He said there were wage and hour laws if we thought our time cards were not right. He said that these agencies were available to us without representation. He said that we did not need the union's permission or the company's permission to go to these agencies. We could do that on our own. Employees asked questions at the meeting about union negotiations. John said that he did not really know about the progress of negotiations. John said that employees should ask their business agent or negotiations committee. John did not answer questions about negotiations. He directed our attention back to the booklet. Toward the end of the meeting, John said if we were dissatisfied with the Union, it was not too late to do something about it. This was said after employees asked many questions expressing dissatisfaction with the Union. During the meeting, John did not explain what we could do to get rid of the Union. I was not threatened in any way at the meeting and no promises were made. I was the last employee to leave the meeting. I asked John what he meant when we said that it was not too late to get rid of the Union. He asked what was going on. I said that he just heard at the meeting that we were dissatisfied with the progress of negotiations. I asked what the steps are to have the Union no longer represent us. He said that it was not easy. He said that there needs to be an election. He explained that the first step would be getting enough employees to sign a petition to get an election. I asked about the petition, if it was something I could get on line. John gestured toward the window. He said that there were petitions over there. I then walked over to a chair and picked one up. I asked what I should do with it. He said that I could sign it. I asked

These petitions were not out in the open. They were on a chair in a back corner. -2- ✓

Initials: 

what I should do next. He said that I could sign it and give it to him but he was not supposed to take them. He said that he had to make sure there were no threats or intimidation. He said that I should really give it Diane Delaney. He said that other employees could sign their own petitions if they wanted to do it privately. I then left the meeting.

At the top the petition it said, something about not wanting the Union. On February 12, 2015, The Board Agent showed me a copy of a petition I signed. At the top, it has, "Through statements and petition signing, employees at Linwood Care Center no longer wish to be represented by 1199 SEIU.

Right after the meeting, I took my petition to my unit. I was the first one to come back from one of these meetings. My co-workers asked what the meeting was about. I told them generally what it was about. I showed them the booklet and explained what was said about the booklet. I also told them that it was not too late to get rid of the Union. I showed them the petition and explained the process of getting another election. I made about 20 copies of the blank petition and put them in my nursing bag. Three people signed my petition that day while I was talking to them: Kimberly Sturgis, Elizabeth King, and Kathryn Tomlison. After the three employees signed my petition, I put the signed petition in Diane Delaney 's box. During the next week, I handed out my blank petitions. I told employees that it was a chance to have another election based on the performance of the Union after the past 12-months. I talked to so many people that I do not remember who I gave the petitions to. I handed out about 20 blank petitions. I did tell the employees to put the petitions in Delaney's box. None of the petitions were returned to me.

EXHIBIT B

Linwood Care Center
Case 04-RM-145463

Confidential Witness Affidavit

I, ^{m.} Lynda Adams, being first duly sworn upon my oath, state as follows:

I have been given assurances by an agent of the National Labor Relations Board (NLRB) that this Confidential Witness Affidavit will be considered a confidential law enforcement record by the NLRB and will not be disclosed unless it becomes necessary to produce this Confidential Witness Affidavit in connection with a formal proceeding.

I reside at 6303 Palmer Ave., Mays Landing, Northfield, NJ 08330

My home telephone number (including area code) is 609-837-2788

My cell phone number (including area code) is 609-402-6347

My e-mail address is ljjmp@comcast.net

I am employed by Linwood Care Center

located at Linwood, NJ

① I am employed as an LPN. I have worked at Linwood since 1998

The employees at Linwood are represented by SEIU Local 1199. The Union won an election at Linwood around December 2013.

② I drafted a petition to get rid of local 1199. I did this in on or around mid to late January 2015 at home on my computer. I did not want the Union from the start. ^U After the Union was voted in, I started to ask friends in business how to get rid of the Union. ~~I began to ask more questions as time moved on after the election.~~ I began to ask more questions as time moved on after the election. Our raises were frozen and we received no information from the Union. ^U I may have said out loud During the past year

Managers may have heard but did not respond. U

③ I do not recall the exact date I decided to write the petition but it was around January 2015. I talked to some co-workers about my desire to get a petition signed to get rid of the Union. ^{UN before I actually wrote the petition,} I do not want to name the co-workers. They were in favor of getting rid of the Union.

④ I did not get my information about how to vote out the Union from any supervisors or managers at Linwood. As I stated previously, I asked Friends who are in business how to get rid of the Union. I spoke to my father about a year or two ago. I also spoke to a friend who runs a grocery store and a friend who is a CPA. They told me that I would need to go through the Labor Board with anything like a petition to get rid of the Union.

⑤ I typed a form that said "through statements and petition signing, employees at Linwood Care Center, no longer wish to be represented to 1199 SEIU." The Board Agent showed me a copy of a form I made. It has my signature on it and signatures of Kathleen Stenson and Sarah Gupton.

⑥ The first time I brought a petition to work was in or around ^{late} January 2015. I carried the petition in my note book. I asked a few ~~unions~~ ^{UN} ~~unions~~ CNAs to sign. I spoke to Stenson, Gupton and Tonia Merrill. Merrill ^{UN} said she was

1 uncomfortable signing a form where others could see
 2 whether she signed it or not. I then went to my
 3 car and got her a blank form. I gave ^{it to} Merrill. I
 4 told her if she wanted to sign it, she could give it
 5 to me or put it under Human Resources' door.
 6 The Human Resources Director is Bose P.

UR After ~~I solicited the signatures of the three~~ CNAs, ~~I did not~~ After I asked the three
 7 CNAs to sign the petitions, I put ^{blank} petitions
 8 around Linwood. I put them in the breakroom,
 9 coat room ^{and} conference room. ~~When~~ I may have
 10 put some ^{on} the desk where ~~we~~ put our notes.
 11 I told employees where they could find the
 12 petitions. I do not recall approximately how
 13 many employees I approached. I only asked
 14 Stepon, Gupton and Merrill directly with the
 15 petition in hand. With the other employees,
 16 I did not have the petition in hand when
 17 I told them about it. I told the employees
 18 where they could find blank petitions. I
 19 told the employees to put them in Bose's mailbox
 20 or put them under her door, or give them
 21 to me.

22
 23
 24 ② Some employees handed ^{signed} petitions back to
 25 me directly. I cannot estimate how
 26 many petitions were handed back to me.
 27 ~~Over~~ Over the next week or two
 28 after I put the petitions out, ^{50 or more} employees
 29 handed them back to me. I put the petitions

1 under Bose's door as I received them.
 2 Sometimes I put one or two under her door.
 3 At one point in January, ^{or February} 2015, I put a stack
 4 under Bose's door. I put a post-it note
 5 that said "Fax these." I did not say
 6 where the petitions should be faxed. I
 7 did not sign my name. I wanted Bose to
 8 fax the petitions to wherever they should
 9 go. I figured she should know because
 10 she was in human resources. I cannot
 11 estimate whether the stack was about 3 or 4
 12 petitions or about 25. I am just not sure.

13 ⑧ I was openly vocal about not wanting
 14 the Union. I do not know whether or not
 15 anyone in management knows that I
 16 wrote the petition or that I was circulating
 17 it. I did not discuss the petition with
 18 any supervisors or managers at any time.
 19 ~~At the meeting~~ I attended a meeting in or
 20 around January 2015 concerning employee morale.
 21 The meeting was held by people from
 22 corporate. It was held in a conference
 23 room. I believe we signed in. There
 24 were about five or six employees at the
 25 meeting. The Union was not mentioned by
 26 the people presenting or the employees
 27 attending the meeting. I do not recall who
 28 was in my meeting. The meeting was about
 29 what we could do to make the building better.
 30 I did not discuss how to get the Union out of Linwood
 with the people from corporate or any consultants at Linwood.
 I did not talk about the petition with anyone from corporate or a +

WA
I do not know how many signatures were collected on my petition. I do not know if other employees tried to collect signatures.

I am being provided a copy of this Confidential Witness Affidavit for my review. I understand that this affidavit is a confidential law enforcement record and should not be shown to any person other than my attorney or other person representing me in this proceeding.

I have read this Confidential Witness Affidavit consisting of ^{5A} ~~7~~ pages, including this page, I fully understand it, and I state under penalty of perjury that it is true and correct. However, if after reviewing this affidavit again, I remember anything else that is important or I wish to make any changes, I will immediately notify the Board agent.

Date: February 18, 2015 Signature: *Lynda M. Adams*
Lynda Adams

Signed and sworn to before me on February 18, 2015 at
Northfield, NJ

K O'Neill
KATHLEEN O'NEILL
Board Agent
National Labor Relations Board

A 5

Initials: *WA*

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From the Philadelphia Business Journal:

<http://www.bizjournals.com/philadelphia/news/2016/03/28/nlr-philadelphia-regional-director-was-suspended.html>

Exclusive: NLRB Philadelphia regional director was suspended 30 days without pay

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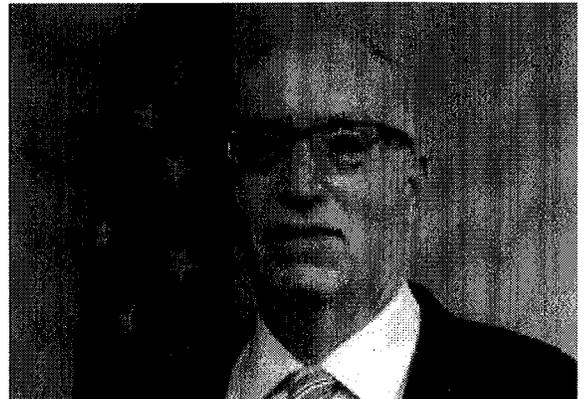
Mar 28, 2016, 1:07pm EDT **Updated: Mar 28, 2016, 1:54pm EDT**

Dennis Walsh, the head of the National Labor Relations Board's Philadelphia office, was suspended without pay for 30 days, but an agency spokeswoman would not comment on the reason for the suspension.

"While I cannot comment to the specifics that led to the agency's actions, I can confirm that Regional Director Walsh was placed on unpaid suspension for 30 calendar days beginning December 13th," NLRB spokeswoman Jessica Kahanek said in a statement Monday.

The disciplinary action came just months after Walsh was criticized by a local lawyer for a purported conflict of interest over his role as chair of a pro-union organization.

Walsh, who has led the NLRB's efforts in eastern Philadelphia and South Jersey (Region 4) **since 2013**, had been under some scrutiny since last summer. That's when Center City construction lawyer Wally Zimolong wrote a letter to



Dennis Walsh, the Philadelphia regional director for the National Labor Relations Board, was suspended without pay for 30 days.

EXHIBIT C

Republican members of the region's congressional delegation regarding a potential conflict of interest due to Walsh's role as then-chairman of the Peggy Browning Fund (PBF), a non-profit established in memory of a prominent Philadelphia area labor lawyer that **advocates for workers' rights**.

That, Zimolong said in his June 4 letter addressed to U.S. Sen. Pat Toomey and U.S. Representatives Mike Fitzpatrick, Pat Meehan and Ryan Costello, brings into question his impartiality.

Mr. Walsh's mere affiliation with a partisan organization, like the PBF, raises questions regarding his impartiality. Mr. Walsh's affiliation with the PBF fails squarely within the type of relationship that Section 502 states is impermissible. However, it does not appear that Mr. Walsh has ever notified the NLRB ethics officer about this conflict of interest, has ever recused himself from any matters involving unions that he maintains a relationship with through the PBF, and appears to be acting in blatant violation of federal law.

The letter was **originally covered** by conservative website RedState.com on June 17. Zimolong said he was notified by the NLRB in September that it was investigating the matter.

Walsh was not available Friday when a call was placed to the NLRB's Philadelphia office, where a representative said he was out of the office until later this week. Inquiries were referred to the agency's public affairs unit in Washington, which released the statement.

\$15.5M deal: BioTelemetry to buy imaging technology company

According to PBF's website, Walsh is no longer on its board, which includes several union presidents and obtains advice from staffers from the AFL-CIO, AFSCME and others.

Zimolong said his chief concern was that Walsh could not be even-handed.

"How am I supposed to look at him as a neutral arbitrator when he's out raising money from unions [for PBF]?" said Zimolong, who represents management in

labor disputes.

Marc Furman of Cohen Seglias, another construction lawyer that represents management in labor disputes before the NLRB, said when he found out about the potential conflict raised in Zimolong's letter, he had similar concerns.

Walsh, a 1983 Cornell Law School graduate, began working with the NLRB in 1984 and aside from a five year stint in private practice in Philadelphia, has spent the bulk of his career in the public sector.

As regional director, he oversees the NLRB's activities in 22 eastern Pennsylvania counties, eight South Jersey counties and one Delaware county.

Jeff Blumenthal

Reporter

Philadelphia Business Journal





Portfolio Media, Inc. | 860 Broadway, 6th Floor | New York, NY 10003 | www.law360.com
Phone: +1 646 783 7100 | Fax: +1 646 783 7161 | customerservice@law360.com

NLRB Regional Director In Philly Suspended For 30 Days

By **Matt Fair**

Law360, Philadelphia (March 28, 2016, 6:59 PM ET) -- The National Labor Relations Board confirmed Monday that its regional director in Philadelphia, who has faced criticism for his ties to the pro-union Peggy Browning Fund, was suspended without pay for 30 days at the end of December.

NLRB spokeswoman Jessica Kahanek told Law360 that Dennis Walsh, who was named as Region 4 director in January 2013, was suspended beginning Dec. 13, but she declined to comment on the circumstances that led to the agency's action.

Walsh did not immediately return a message seeking comment.

Walsh faced criticism in July from employment lawyer Wally Zimolong, the head of the Philadelphia-based Zimolong LLC, for his dual roles as director of the NLRB and chair of the Peggy Browning Fund, whose mission, according to its website, is "to educate and inspire the next generation of law students to become advocates for workplace justice."

Zimolong raised concerns in a letter to members of Pennsylvania's congressional delegation that Walsh's potential to solicit donations from unions having business before the NLRB was "at best an implicit conflict of interest that shakes the public trust, and at worst a violation of federal laws."

He cited an annual workers' rights conference put together by the group with workshops aimed at helping to organize low-wage workers.

"In short, Mr. Walsh is the chairman of a union activist organization whose stated goal is to organize workers, and at the same time [he is] asked to be a neutral investigator of labor unions that violate labor laws and employers that allegedly violate union rights," Zimolong's letter said.

He also pointed to the fact that other members of the group's board included the general counsel for the United Steelworkers of America and an associate general counsel for the American Federation of State, County, and Municipal Employees.

He said that Walsh's role with the Peggy Browning Fund could be viewed as a violation of the Hatch Act barring employees of executive agencies from taking an active role in soliciting political contributions.

"The [fund] has a clear political purpose," Zimolong's letter said.

Zimolong told Law360 on Monday that he had no information about any potential action that may have been sparked by his letter.

EXHIBIT D

While news releases cite Walsh as the fund's chair as recently as June, the group's website currently lists Richard Brean, United Steelworkers general counsel, as chair.

Officials with the fund did not immediately return messages seeking comment on Monday.

--Editing by Kelly Duncan.

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